

ESTTA Tracking number: **ESTTA451990**Filing date: **01/19/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Tea of Life, Inc.		
Entity	Corporation	Citizenship	Texas
Address	6731 Bridge Street Suite 414 Fort Worth, TX 76112 UNITED STATES		

Attorney information	Remy M. Davis Klemchuk Kubasta LLP 8150 N. Central Expressway 10th Floor Dallas, TX 75206 UNITED STATES ipdocketing@kk-llp.com Phone:214-367-6000
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Applicant Information

Application No	85362089	Publication date	12/20/2011
Opposition Filing Date	01/19/2012	Opposition Period Ends	01/19/2012
Applicant	A. Peale & Company, LLC 616 Palisade Avenue Englewood Cliffs, NJ 07632 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2004/12/28 First Use In Commerce: 2004/12/28 All goods and services in the class are opposed, namely: Teas not for medicinal purposes
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Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	Tea of Life Notice of Opposition.pdf (5 pages)(44311 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Remy M. Davis/
Name	Remy M. Davis

Date	01/19/2012
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of: A. Peale & Company, LLC
Serial No.: 85/362,089
Filed: July 1, 2011
Mark: TEA OF LIFE
Int'l Class: 30
Published: December 20, 2011

Tea of Life, Inc.,)	
)	
Opposer)	
v.)	Opposition No. _____
)	
A. Peale & Company, LLC,)	
)	
Applicant.)	

Notice of Opposition

TEA OF LIFE, INC. ("Opposer"), a Texas corporation, having its principle place of business at 6731 Bridge Street, Suite 414, Fort Worth, Texas 76112, believes it will be damaged by registration of the mark shown in Application Serial No. 85/362,089, filed July 1, 2011, in International Class 30 and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. On or about July 1, 2011, Applicant, A. Peale & Company, LLC, a Delaware limited liability company, identifying an address of 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632 ("Applicant"), filed an application with the U.S. Patent and

Trademark Office, Application Serial No. 85/362,089, seeking registration on the Principal Register of the mark TEA OF LIFE for “teas not for medicinal purposes” in Class 30 as evidenced by the publication of said mark on December 20, 2011 (the “Application”). Applicant’s Application is based on alleged use of the mark and use of the mark in interstate commerce since at least as early as December 28, 2004.

2. Commencing at least as early as March 1, 2002 internationally and at least as early as February 20, 2005 in interstate commerce in the United States, Opposer, through its predecessors-in-interest, adopted and commenced use in interstate commerce of the mark TEA OF LIFE in connection with tea and tea products, including but not limited to beverages made of tea; black tea; chai tea; ginseng tea; green tea; herbal tea; iced tea; oolong tea; sage tea; tea; tea bags; tea for infusions (“Opposer’s Mark”).
3. Opposer is the owner of pending application Serial No. 85/456,461 for the mark TEA OF LIFE (“Opposer’s Application”).
4. Based on information and belief, prior to 2010, Applicant had no knowledge of, involvement with, use of or intention to use the TEA OF LIFE mark, either in connection with Applicant’s Application or Opposer’s Mark.
5. Based on information and belief, at some point in 2010, Applicant initiated discussions with a principle member of Amazon Trading PVT, LTd., a Sri Lankan company (the “Sri Lankan Company”), predecessor-in-interest to Opposer’s Mark.
6. At that time, Applicant and the Sri Lankan Company entered into an informal agreement whereby Applicant would act as a sales representative for Opposer’s Mark.

7. Through a succession of entity conversions and assignments, Opposer acquired all right, title, and interest in and to Opposer's Mark and is the current owner of all right, title and interest in and to Opposer's Mark.
8. At no time during the course of any informal relationship between Applicant and the Sri Lankan Company, or any predecessor-in-interest to Opposer's Mark including, without limitation, Opposer, did the Sri Lankan Company or Opposer transfer any right, title or interest in and to Opposer's Mark.
9. Opposer will be damaged by the registration of Applicant's Application because Opposer, and not Applicant, is the owner of the TEA OF LIFE mark identified in Applicant's Application.
10. Opposer will be damaged by the registration of Applicant's Application because Applicant fraudulently filed Applicant's Application.
11. As a basis for this claim, Opposer alleges that Applicant is not the owner of the mark identified in Applicant's Application.
12. Upon information and belief, Applicant is aware that it is not the owner of the mark identified in Applicant's Application.
13. Upon information and belief, the dates identified in Applicant's Application indicating Applicant's alleged first use of the mark and first use of the mark in interstate commerce have no basis and are fraudulent.
14. Further, Applicant has not ever used the mark at all nor has Applicant used the mark in interstate commerce as alleged in Applicant's Application. Applicant has been, at all times, fully aware that it is not the owner of the mark represented in Applicant's

Application and has merely been acting as a sales representative for Opposer and its predecessors-in-interest.

15. Opposer will be injured by the granting of a Certificate of Registration to Applicant for the mark TEA OF LIFE because such registration would thereby provide Applicant with the prima facie exclusive right to use such mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer respectfully prays that its Opposition be sustained and the application for registration, Application Serial No. 85/362,089 by Applicant be denied and refused.

Dated: January 19, 2012

Respectfully submitted,

KLEMCHUK KUBASTA LLP
Attorneys for Opposer

/s/ Remy M. Davis

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION is being served upon Applicant's Attorney of record, Michael B. Chesal of Peretz Chesal & Herrmann, PL, at the following address, on this 19th day of January, 2012:

Michael B. Chesal
Peretz Chesal & Herrmann, PL
201 S. Biscayne Blvd, Ste. 1750
Miami, Florida 33131-4329

/s/ Megan Haslam

Megan Haslam